

Single Bench

C.F. (100)

(1)

(2)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

WRIT PETITION No. 3355 OF 2004

PETITIONER:

Smt. Laxmania Bai, widow of late
Baburam, aged about 32 years, resident
of village Kuchili, Tah: Balrampur,
Dist: Balrampur (C.G)

Vs.

RESPONDENTS:

1. South Eastern Coalfields Limited:
Through its Chairman-cum-Managing Director,
Bilaspur (C.G)

2. Chief General Manager, South Eastern
Coalfields Limited, Kurasia colliery,
Tah: Manendragarh, Dist: Korea (C.G)

3. Chief Personnel Officer, South Eastern
Coalfields Limited, Kurasia colliery,
Tah: Manendragarh, Dist: Korea (C.G)

4. Manager, South Eastern Coalfields
Limited, Office of Manager, Kurasia
Colliery, Tah: Manendragarh, Dist: Korea (CG)

P.R. No. 3952/07
Presented by Shri. R. S. D. Ahly
dated 18.10.07

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

(25)

HIGH COURT OF CHHATTISGARH AT BILASPUR**SINGLE BENCH : HON'BLE MR. SATISH K. AGNIHOTRI, J.****WRIT PETITION NO.3955 OF 2004****Petitioner**

:

Smt. Laxmania Bai**versus****Respondents**

:

**South Eastern Coalfields Limited
and others****Present****: Dr. Shailesh Ahuja, counsel for the petitioner.
Mr. P.S.Koshy, counsel for the respondents.****ORDER****(Passed on 17th of November, 2006)**

The husband of the petitioner Shri Baburam died on 28-1-2003 in harness while working as Chainman in the Survey Department of respondent No.1. The petitioner, being second wife of the deceased made an application/representation for compassionate appointment on 4-9-2004. The respondents rejected the application/representation of the petitioner on the ground that in the service record of the deceased employee, only one wife, i.e., Smt. Berulia Bai has been recorded as wife of the deceased employee and as such the petitioner cannot be considered for compassionate appointment on the basis of death of Baburam.

2. Dr. Shailesh Ahuja, learned counsel appearing for the petitioner would submit that in tribal custom, a male member is permitted to have more than one wife and admittedly as per affidavit dated 4-9-2004 (Annexure P-10) of the first wife, i.e., Smt. Berulia Bai, Smt. Laxmania Bai, the petitioner, was duly married second wife of Baburam son of Moharsai. It was further contended that the first wife Smt. Berulia Bai died on 24-5-2005. Thus, working of Smt. Berulia Bai could not come in the way of appointment of the petitioner on compassionate basis.

3. Mr. P.S.Koshy, learned counsel appearing for the respondents, *per contra*, would submit that the respondents rejected the application/representation of the petitioner on the ground that in the service record of the deceased employee, only one wife, i.e., Smt. Berulia Bai has been recorded as wife of the deceased employee and as such the petitioner could not be considered for compassionate appointment on the basis of death of Baburam. It was further contended that a suit for declaration that the petitioner was a legal wife of the deceased late Baburam is pending consideration before Civil Judge Class-II, Manendragarh, District Koriya. Learned counsel for the respondents further relied on the compassionate appointment scheme of respondent No.1, which provides for employment to one dependant of the deceased employee, who dies while in service. Clause 9.3.1 of the Memorandum of Agreement (National Coal Wage Agreement-V) reads as under :-

"9.3.1 Employment would be provided to one dependant of workers who are disabled

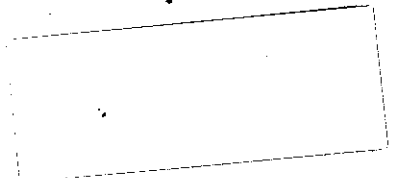
permanently and also those who die while in service. The provision will be implemented as follows :"

4. Thus, the petitioner is not entitled to compassionate appointment.

5. I have heard learned counsel for the parties and perused the records. It is evident that the petitioner is second wife of the deceased Baburam and the first wife Smt. Berulia Bai was already working when Baburam died in harness. The policy for compassionate appointment of respondent No.1 does not provide for grant of compassionate appointment to second dependant. Therefore, the petitioner is not entitled to compassionate appointment, which tantamount to back door entry dehors the policy of respondent No.1 as per the Memorandum of Agreement (National Coal Wage Agreement-V).

6. The Supreme Court, in *State of J & K and others vs. Sajad Ahmed Mir*¹, after having considered all the aspects of compassionate appointment, observed as under :-

"11. it is that such an appointment is an exception to the general rule. Normally, an employment in the government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public



office. This general rule should not be departed from except where compelling circumstances demand, such as, death of the sole breadwinner and likelihood of the family suffering because of the setback. Once it is proved that in spite of the death of the breadwinner, the family survived and substantial period is over, there is no necessity to say "goodbye" to the normal rule of appointment and to show favour to one at the cost of the interests of several others ignoring the mandate of Article 14 of the Constitution."

7. In the case on hand, the Memorandum of Agreement (National Coal Wage Agreement-V) does not provide for compassionate appointment to the second dependant member of the deceased employee. One member of the family, which consists of the deceased and two wives, as per the affidavit dated 4-9-2004 (Annexure P-10), the first wife of the deceased Smt. Berulia Bai was already in employment at the time of the death of Baburam.

8. For the reasons made hereinabove, this petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge